

Amendment and Response

Serial No.: 10/728,439

Confirmation No.: 9418

Filed: 5 December 2003

For: POLYMER COMPOSITIONS WITH BIOACTIVE AGENT, MEDICAL ARTICLES, AND METHODS

Page 7 of 9

Remarks

The Office Action dated September 2, 2008 has been received and reviewed.

Claims 1-93 having been cancelled, without prejudice, and claims 94-117 having been added, the pending claims are claims 94-117. Reconsideration and withdrawal of the rejections are respectfully requested.

Support for the new claims can be found throughout the specification, including the originally filed claims. See, for example, page 5, lines 10-17, page 9, lines 11-15, page 10, lines 4-12, page 11, lines 8-23, page 13, lines 5-24, page 14, line 21 through page 15, line 7.

Double Patenting Rejection

Claims 1-45, 48-50, 54, 58, and 60 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-15, 17-19, 22-25, 77, 79, 82, 85-106, and 108-121 of U.S. Patent Application No. 10/728,577. Upon an indication of otherwise allowable subject matter and in the event this rejection is maintained, Applicants will provide an appropriate response.

The 35 U.S.C. §103 Rejection

The Examiner rejected claims 7-9 and 12 under 35 U.S.C. §103 as being unpatentable over Highgate (U.S. Patent No. 4,768,503) in view of Asmus (U.S. Patent No. 5,270,358). The Examiner rejected claim 10 under 35 U.S.C. §103 as being unpatentable over Highgate (U.S. Patent No. 4,768,503) in view of Asmus (U.S. Patent No. 5,270,358) and further in view of Ahmed et al. (U.S. Patent No. 6,458,877). The Examiner rejected claims 19-39, 42-45, 48-50, 53, 55, and 58-60 under 35 U.S.C. §103 as being unpatentable over Highgate (U.S. Patent No. 4,768,503) in view of Asmus (U.S. Patent No. 5,270,358) and further in view of Takemori et al. (U.S. Patent No. 5,075,373). The Examiner rejected claims 40 and 41 under 35 U.S.C. §103 as being unpatentable over Highgate (U.S. Patent No. 4,768,503) in view of Asmus (U.S. Patent No. 5,270,358) and Takemori et al. (U.S. Patent No. 5,075,373) and further in view of Ahmed et al. (U.S. Patent No. 6,458,877). The Examiner rejected claims 1-4, 6, and 75 under

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Page 8 of 9

35 U.S.C. §103 as being unpatentable over Highgate (U.S. Patent No. 4,768,503) in view of Asmus (U.S. Patent No. 5,270,358) and further in view of Laurin et al. (U.S. Patent No. 4,603,152). The Examiner rejected claim 5 under 35 U.S.C. §103 as being unpatentable over Highgate (U.S. Patent No. 4,768,503) in view of Asmus (U.S. Patent No. 5,270,358) and Laurin et al. (U.S. Patent No. 4,603,152) and further in view of Ahmed et al. (U.S. Patent No. 6,458,877). The Examiner rejected claims 13-18 under 35 U.S.C. §103 as being unpatentable over Highgate (U.S. Patent No. 4,768,503) in view of Asmus (U.S. Patent No. 5,270,358) and Laurin et al. (U.S. Patent No. 4,603,152) and further in view of Yan et al. (U.S. Patent Publication No. 2003/0185889). These rejections are rendered moot in view of cancellation of each of claims 1-93; insofar as they apply to the presently pending claims, they are respectfully traversed.

There is no teaching or suggestion in any of the cited art, used in any combination, of a polymer composition comprising: a continuous hydrophobic phase comprising a mixture comprising: a hydrophobic liquid phase (e.g., mineral oil); and a hydrophobic thermoplastic elastomeric polymer (e.g., a styrene-isoprene-styrene block copolymer); absorbent hydrophilic microparticles dispersed within the hydrophobic liquid phase, wherein the hydrophilic microparticles comprise a crosslinked carboxylic acid-containing organic polymer (e.g., a copolymer of sodium acrylate and acrylic acid); and a bioactive agent having a particle size less than one micron dispersed in the hydrophilic microparticles, wherein the bioactive agent is selected from the group consisting of a metal oxide of silver, a metal oxide of copper, a metal oxide of zinc, and combinations thereof; wherein the polymer composition is nonadherent (i.e., display a 180° peel strength of less than 1 N/cm) and contains less than 1 wt% water based on the total weight of the composition. Acknowledgement of the patentability of the present claims is respectfully requested.

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Page 9 of 9

Summary

It is respectfully submitted that the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives at the telephone number listed below if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted
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November 19, 2008

Date

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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that this paper is being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 19th day of November, 2008 at 8:11 am (Central Time).

By: Sara E. Wigant
Name: Sara E. Wigant